



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

NICS Reporting Related to Firearms Laws

[S.L. 2014-115, Section 23.5]

October 9, 2014



Introductory Information

- **National Instant Criminal Background Check System (NICS)** = a national system that checks available records relevant to an individual's eligibility to possess firearms and explosives in accordance with federal law
- NCAOC works closely with NICS and the North Carolina State Bureau of Investigation (SBI) to determine what specific state information should be sent to NICS related to the sale of firearms
- NICS specifies the appropriate technology format for transmittal of electronic records

S.L. 2014-115, Section 23.5

SECTION 23.5.(b) By October 1, 2014, the Administrative Office of the Courts shall report to the Joint Legislative Oversight Committee on Justice and Public Safety its findings and recommendations regarding the information required under G.S. 14-404(c1) that can practicably be transmitted to the National Instant Criminal Background Check System (NICS).

G.S. 14-404(c1)

As amended by section 23.5 of S.L. 2014-115

"(c1) Excluding Saturdays, Sundays, and holidays, ~~not later than 48 hours~~ after receiving notice of any of the **judicial findings, court orders, or other factual matters, relevant to any of the disqualifying conditions specified in subsection (c) of this section**, the clerk of superior court shall determine which information can practicably be transmitted to the National Instant Criminal Background Check System (NICS)~~the clerk of superior court shall cause a record of the determination or finding to be transmitted to the National Instant Criminal Background Check System (NICS).~~ and shall transmit that information to NICS within 48 hours of that determination. The ~~record~~ information shall include a reference to the relevant statutory provision of G.S. 14-404 that precludes the issuance of a permit. ~~The 48-hour period for transmitting a record of a judicial determination or finding to the NICS under this subsection begins upon receipt by the clerk of a copy of the judicial determination or finding.~~"

Technical/Legal Issues Regarding Language in G.S. 14-404(c1)

- S.L. 2013-369 – which enacted the original G.S. 14-404(c1) language, passed the General Assembly in the final days of the 2013 session
 - NCAOC did not have the opportunity to provide input and consultation regarding the new reporting requirements for the clerks prior to passage of the bill
- Technical and legal concerns exist regarding the language in 14-404(c1) and the expanded reporting requirements
 - Language is overly broad
 - Language can be interpreted to require clerks to go beyond ministerial role
 - Language does not take into account that NCAOC has a cooperative reporting relationship with NICS; NCAOC does not make unilateral decisions about what information to send
- Although the General Assembly amended the language in 2014, 14-404(c1) as amended is still problematic
 - NCAOC hopes to work with the General Assembly to resolve continuing technical and legal concerns with the language during the 2015 session

G.S. 14-404(c)

North Carolina's Disqualifying Conditions Related to Firearms *(Emphasis added)*

(c) A permit may not be issued to the following persons:

- (1) One who is **under an indictment or information for or has been convicted in any state, or in any court of the United States, of a felony** (other than an offense pertaining to antitrust violations, unfair trade practices, or restraints of trade). However, a person who has been convicted of a felony in a court of any state or in a court of the United States and (i) who is later pardoned, or (ii) whose firearms rights have been restored pursuant to G.S. 14-415.4, may obtain a permit, if the purchase or receipt of a pistol permitted in this Article does not violate a condition of the pardon or restoration of firearms rights.
- (2) One who is a **fugitive from justice**.
- (3) One who is an **unlawful user of or addicted to marijuana or any depressant, stimulant, or narcotic drug** (as defined in 21 U.S.C. § 802).
- (4) One who has been **adjudicated mentally incompetent or has been committed to any mental institution**.
- (5) One who is an **alien illegally or unlawfully in the United States**.
- (6) One who has been **discharged from the Armed Forces of the United States under dishonorable conditions**.
- (7) One who, having been a citizen of the United States, has **renounced his or her citizenship**.
- (8) One who is **subject to a court order** that:
 - a. Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;
 - b. Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner of the person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 - c. Includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.



Status of NCAOC's Reporting to NICS (as of October 1, 2014)

- NCAOC is working with the SBI and NICS to determine what, if any, additional reporting is practical for these factors
 - 14-404(c)(1) / *felony conviction or information/indictment*
 - 14-404(c)(2) / *fugitive from justice*
 - 14-404(c)(3) / *user of or addicted to drugs*
- NCAOC provides data to NICS related to 14-404(c)(4) / *mentally incompetent or has been committed to a mental institution*
- NCAOC is not a data source for these factors and will not report to NICS
 - 14-404(c)(5) / *alien illegally or unlawfully in the US*
 - 14-404(c)(6) / *dishonorable discharge from the Armed Services*
 - 14-404(c)(7) / *renounced citizenship*
- Local sheriffs enter information related to 14-404(c)(8) / *domestic violence*

14-404(c)(1) / fugitive from justice

- Law enforcement currently may enter the warrant information for felonies and serious misdemeanors into the National Crime Information Center (NCIC) Wanted Persons database, which is accessed via a NICS query
- Less serious misdemeanors are not available to NICS
- NCAOC is working with NICS and the SBI to determine whether NICS is capable of accepting warrants and orders for arrest for less serious misdemeanors

14-404(c)(2) / felony conviction or indictment or information

- NCAOC already provides information to NICS if someone has been *convicted* of a felony, but does not provide information regarding someone “under an indictment or information” in felony cases.
- NCAOC’s Automated Criminal/Infractions System (ACIS) has indicators for bills of information and bills of indictment and can indicate if a process is not disposed.
- NCAOC is working with NICS and the SBI to determine whether and how this information could be provided to NICS.

14-404(c)(3) / user of or addicted to

- NICS already receives information on those who are arrested or convicted of felonies related to drugs, if those individuals have been fingerprinted.
- NCAOC is working with NICS and the SBI to determine whether certain non-fingerprinted drug offense convictions can be accepted by NICS.

Summary

- NCAOC is working with the SBI and NICS to determine what, if any, additional reporting is practical
 - 14-404(c)(1) / *felony conviction or information/indictment*
 - 14-404(c)(2) / *fugitive from justice*
 - 14-404(c)(3) / *user or addicted*
- NCAOC provides data to NICS related to 14-404(c)(4) / *mentally incompetent or has been committed to a mental institution*
- NCAOC is not a data source for three criteria and will not report to NICS
 - 14-404(c)(5) / *alien illegally or unlawfully in the US*
 - 14-404(c)(6) / *dishonorable discharge from the Armed Services*
 - 14-404(c)(7) / *renounced citizenship*
- Local sheriffs enter information related to 14-404(c)(8) / *domestic violence*
- NCAOC looks forward to working with the General Assembly during the 2015 session to resolve problems with the language in 14-404(c1)



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